

PATENT

Attorney Docket No.: 390533  
Express Mail Label No.: EV413241479US

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellant(s): Spitz *et al.*

Confirmation No.: 1353

Serial No.: 09/783,233

Examiner: C. Toomer

Filed: February 14, 2001

Group Art Unit: 1714

For: ALKOXYMETHYL MELAMINE  
CROSSLINKERS

Attorney Docket No. 390533

Mail Stop: Appeal Brief-Patents  
Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPEAL BRIEF**

Dear Sir:

In accordance with 37 C.F.R. § 41.37, and fully responsive to the Office Action of December 7, 2004, Appellants hereby file the Appeal Brief in support of the Appeal in the above-identified matter (hereinafter the '233 Application). A Notice of Appeal, with the appropriate fee of \$500 as required by 37 C.F.R. §§41.31, 41.20(b)(1), was filed on March 7, 2005. Three copies of this brief are enclosed. The \$500 fee for this appeal brief, as required by 37 C.F.R. §41.20(b)(2), is also filed herewith. This appeal brief is timely filed within two months of the mailing of the notice of appeal, and further pursuant to 37 C.F.R. §1.8 and §1.10.

05/11/2005 MAHMED1 00000029 120600 09783233

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**(1) Real party in interest.**

The real party in interest for this appeal is Surface Specialties, S.A. Evidence of this assignment, which was recorded on May 16, 2001, may be found at reel/frame 011820/0887.

**(2) Related appeals and interferences.**

No other appeals or interferences are currently known to Appellants that will directly affect, be directly affected by, or have a bearing on the decision to be rendered by the Board of Patent Appeals and Interferences in the instant appeal.

**(3) Status of claims.**

Claims 1-16 are currently pending in the application and stand rejected under 35 U.S.C. §103(a) as being obvious over U. S. Patent Application No. 5,593,735 granted to Wu (hereinafter "Wu").

**(4) Status of amendments.**

The '233 Application was filed on February 14, 2001. A first office action was mailed on October 24, 2002, to which a response was filed and entered September 7, 2003. On December 7, 2004, a final office action was mailed, prompting this appeal. A Notice of Appeal was filed on March 7, 2005. Claims 1-16 are currently pending, of which Claims 2-15 are original (without claim amendment during prosecution). Claims 1 and 16 were amended to correct grammatical errors in the response dated September 7, 2003.

**(5) Summary of claimed subject matter.**

The inventions of Claims 1-16 concern a crosslinker composition of alkoxyethyl melamine derivatives as provided in pages 3 and 4 of the instant specification. In particular, in Claim 1, from which Claims 2-15 depend, the claim utilizes "consisting essentially of" language. Claim 16 is a second independent Claim, and defines the crosslinker composition in terms of weight percentages of the various components. Claim 1 is as follows:

1. A crosslinker composition consisting essentially of  
50 to 95 weight percent monomeric C<sub>1</sub> to C<sub>8</sub> alkoxyethyl melamine derivatives  
containing not more than about 0.20 wt. % of imino (>N-H) groups; and

5 to 50 weight percent oligomeric C<sub>1</sub> to C<sub>8</sub> alkoxyethyl melamine derivatives, wherein

- (i) when said composition comprises from 5 to 20 wt. % oligomer, said composition has an imino content of less than 0.20 wt. %;
- (ii) when said composition comprises from 20 to 30 wt. % oligomer, said composition has an imino content, I, defined by the algorithm,  $I \leq 0.02X - 0.2$ , where X is the weight percent oligomer in the composition and I is expressed in weight percent imino; or
- (iii) when said composition comprises from 30 to 50 wt. % oligomer, said composition has an imino content of less than 0.7 wt. %, and

c) wherein said weight percent of a) plus b) does not exceed 100%.

(6) **Grounds for rejection to be reviewed on appeal.**

Whether Claims 1-16 are obvious in view of U. S. Patent Application No. 5,593,735 granted to Wu.

(7) **Argument.**

*Wu does not teach or suggest each and every claim limitation within Claims 1-16 as required by 35 U.S.C. § 103. Wu further does not employ the claims language "consisting essentially of" as provided by Appellants' invention.*

When applying 35 U.S.C. §103, the following tenets of patent law are binding:

- a) The claimed invention must be considered as a whole;
- b) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- c) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- d) Reasonable expectation of success is the standard with which obviousness is determined. MPEP §2141.01, *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1134 n.5, 229 U.S.P.Q. 182, 187 n.5 (Fed. Cir. 1986).

In addition, it is respectfully noted that to substantiate a *prima facie* case of obviousness the initial burden rests with the Examiner who must fulfill three requirements. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Appellants' disclosure. (emphasis and formatting added) MPEP § 2143, *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Wu teaches a curable composition comprising a polyfunctional hydroxyl group containing material, a triazine carbamate, an amino resin crosslinking agent, a triazine carbamate co-crosslinking agent, and an acid cure catalyst. Appellants maintain that Wu does not teach or suggest the crosslinker composition of Appellants' invention.

Appellants specifically maintain that the composition of Wu further **requires a carbamate co-crosslinker**. Appellants assert that the instant invention does not utilize a co-crosslinking agent, and a co-crosslinking agent such as that provided in Wu is never discussed in the chemistry of the instant invention.

Appellants maintain that the presence of a carbamate co-crosslinker would materially affect the crosslinker composition of the instant invention, and further assert that the Claim language "consisting essentially of" as utilized in Claim 1 does not allow for the inclusion of the carbamate co-crosslinker of Wu.

#### *Claim 1*

Claim 1 recites a crosslinker composition consisting essentially of

- a) 50 to 95 weight percent monomeric C<sub>1</sub> to C<sub>8</sub> alkoxyethyl melamine derivatives containing not more than about 0.20 wt. % of imino (>N-H) groups; and
- b) 5 to 50 weight percent oligomeric C<sub>1</sub> to C<sub>8</sub> alkoxyethyl melamine derivatives, wherein
  - (i) when said composition comprises from 5 to 20 wt. % oligomer, said composition has an imino content of less than 0.20 wt. %;
  - (ii) when said composition comprises from 20 to 30 wt. % oligomer, said composition has an imino content, I, defined by the algorithm, I ≤ 0.02X - 0.2, where X is the weight percent oligomer in the composition and I is expressed in weight percent imino; or

(iii) when said composition comprises from 30 to 50 wt. % oligomer, said composition has an imino content of less than 0.7 wt. %, and

c) wherein said weight percent of a) plus b) does not exceed 100%.

In regard to Claim 1, Wu does not teach or suggest a composition consisting essentially of those elements enumerated in Claim 1.

Claims 2-15 depend from Claim 1 and benefit from like argument. However, these Claims have additional features that patentably distinguish over Wu.

*Claim 2*

For example, Claim 2 recites a composition that is liquid at 20 °C. As argued above, Wu does not disclose or suggest the composition of Claim 2.

*Claim 3*

In Claim 3, the composition has an imino content of less than about 0.6 wt %. Wu does not disclose or suggest the composition of Claim 3.

*Claim 4*

Claim 4 recites a composition with an imino content of less than about 0.5 wt %. Wu does not disclose or suggest the composition of Claim 4.

*Claim 5*

Claim 5 recites a composition with an imino content of less than about 0.4 wt %. Wu does not disclose or suggest the composition of Claim 5.

*Claim 6*

Claim 6 recites a composition with an imino content of less than about 0.3 wt %. Wu does not disclose or suggest the composition of Claim 6.

*Claim 7*

Claim 7 recites a composition with an imino content of less than about 0.2 wt %. Wu does not disclose or suggest the composition of Claim 7.

*Claim 8*

Claim 8 recites a composition with methoxymethyl melamine derivatives. Wu does not disclose or suggest the composition of Claim 8.

*Claim 9*

Claim 9 recites the composition which is liquid at 20 C. Wu does not disclose or suggest the composition of Claim 9.

*Claim 10*

Claim 10 recites the composition with an imino content of less than about 0.6 wt. %. Wu does not disclose or suggest the composition of Claim 10.

*Claim 11*

Claim 11 recites the composition with an imino content of less than about 0.5 wt. %. Wu does not disclose or suggest the composition of Claim 11.

*Claim 12*

Claim 12 recites the composition with an imino content of less than about 0.4 wt. %. Wu does not disclose or suggest the composition of Claim 12.

*Claim 13*

Claim 13 recites the composition with an imino content of less than about 0.3 wt. %. Wu does not disclose or suggest the composition of Claim 13.

*Claim 14*

Claim 14 recites the composition with an imino content of less than about 0.2 wt. %. Wu does not disclose or suggest the composition of Claim 14.

*Claim 15*

Claim 15 recites the composition wherein for each mole of melamine in the melamine derivatives in said composition there is at least 5.6 moles of alkoxyethyl groups attached to pendant nitrogen atoms of said melamine, where the alkoxyethyl groups are mixtures of methoxyethyl and minor amounts higher alkoxyethyl groups; where the amount of higher alkoxyethyl groups present does not inhibit curing of a standard coating at 66 °C to a hardness which survives at least 30 MEK rubs. Wu does not disclose or suggest the composition of Claim 15.

*Claim 16*

Claim 16 recites a crosslinker composition with specific monomeric and oligomeric alkoxyethylated melamine components. Wu does not disclose or suggest the composition of Claim 16.

As argued above, Wu does not teach or suggest the compositions of Appellants' invention consisting essentially of the components as defined at least by independent Claim 1 and Claim 16, and the dependent Claims thereby.

(8) **Claims appendix.**

Appellants enclose a copy of the Claims involved in this appeal as an appendix hereto.

**(9) Evidence appendix.**

Not applicable.

**(10) Related proceedings appendix.**

Not applicable.

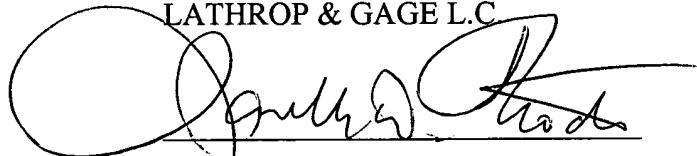
**CONCLUSION**

Appellants respectfully request the Honorable Board of Appeals reverse the Examiner in the rejection of Claims 1-16 under 35 U.S.C. § 103(a). Appellants respectfully solicit allowance of Claims 1-16, all of the Claims appealed and pending in the instant application.

Other than the costs for this appeal brief, no further fees are deemed due in connection with this matter. However, the Commissioner is hereby authorized to charge any fees which may be due in this matter from Deposit Account Number 08-2025.

Respectfully submitted,

LATHROP & GAGE L.C.



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## **Appendix to Appeal Brief**

1. A crosslinker composition consisting essentially of
  - a) 50 to 95 weight percent monomeric C<sub>1</sub> to C<sub>8</sub> alkoxyethyl melamine derivatives containing not more than about 0.20 wt. % of imino (>N-H) groups; and
  - b) 5 to 50 weight percent oligomeric C<sub>1</sub> to C<sub>8</sub> alkoxyethyl melamine derivatives, wherein
    - (i) when said composition comprises from 5 to 20 wt. % oligomer, said composition has an imino content of less than 0.20 wt. %;
    - (ii) when said composition comprises from 20 to 30 wt. % oligomer, said composition has an imino content, I, defined by the algorithm, I ≤ 0.02X - 0.2, where X is the weight percent oligomer in the composition and I is expressed in weight percent imino; or
    - (iii) when said composition comprises from 30 to 50 wt. % oligomer, said composition has an imino content of less than 0.7 wt. %, and
  - c) wherein said weight percent of a) plus b) does not exceed 100%.
2. The composition according to claim 1 which is liquid at 20 °C.
3. The composition according to claim 1 wherein said composition has an imino content of less than about 0.6 wt. %.
4. The composition according to claim 1 wherein said composition has an imino content of less than about 0.5 wt. %.
5. The composition according to claim 1 wherein said composition has an imino content of less than about 0.4 wt. %.
6. The composition according to claim 1 wherein said composition has an imino content of less than about 0.3 wt. %.
7. The composition according to claim 1 wherein said composition has an imino content of less than about 0.2 wt. %.
8. The composition according to claim 1 wherein said when said alkoxyethyl melamine derivatives are methoxymethyl melamine derivatives.

9. The composition according to claim 8 which is liquid at 20 °C.

10. The composition according to claim 8 wherein said composition has an imino content of less than about 0.6 wt. %.

11. The composition according to claim 8 wherein said composition has an imino content of less than about 0.5 wt. %.

12. The composition according to claim 8 wherein said composition has an imino content of less than about 0.4 wt. %.

13. The composition according to claim 8 wherein said composition has an imino content of less than about 0.3 wt. %.

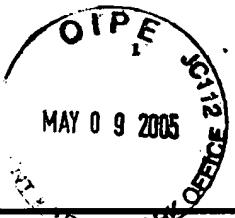
14. The composition according to claim 8 wherein said composition has an imino content of less than about 0.2 wt. %.

15. The composition according to claim 1 wherein for each mole of melamine in the melamine derivatives in said composition there is at least 5.6 moles of alkoxyethyl groups attached to pendant nitrogen atoms of said melamine, where the alkoxyethyl groups are mixtures of methyoxyethyl and minor amounts higher alkoxyethyl groups; where the amount of higher alkoxyethyl groups present does not inhibit curing of a standard coating at 66 °C to a hardness which survives at least 30 MEK rubs.

16. A crosslinker composition comprising monomeric and oligomeric alkoxyethylated melamine, wherein monomeric alkoxyethylated melamine molecules have 6 moles of substituent groups attached to pendant nitrogen atoms per mole of monomeric melamine, wherein said substituent groups are selected from the group consisting of imino [>N-H], methylol [>N-CH<sub>2</sub>OH] , alkoxyethyl [>N-CH<sub>2</sub>OR] and acetal [>N-CH<sub>2</sub>OCH<sub>2</sub>OR]; and wherein difunctional bridging groups between melamine units in oligomeric alkoxyethylated melamine are selected from the group consisting of methylene groups [>N-CH<sub>2</sub>-N<] and methylene ether [>N-CH<sub>2</sub>OCH<sub>2</sub>-N<] groups; wherein:

- (a) monomeric alkoxymethylated melamine units comprise at least 50 and up to 95 percent by weight of the monomeric and oligomeric alkoxymethylated melamine units in the composition as determined by size exclusion chromatography,
- (b) alkoxymethyl groups comprise at least 5.0 moles of substituent groups attached to pendant nitrogen atoms per mole of monomeric melamine, and
- (c) said alkoxymethyl groups on each melamine unit are methoxymethyl or mixtures of methoxymethyl and higher alkoxymethyl groups; wherein
- (d) when said composition comprises from 5 to 20 wt. % oligomer, said composition has an imino content of less than 0.20 wt. %;
- (e) when said composition comprises from 20 to 30 wt. % oligomer, said composition has an imino content, I, defined by the algorithm,  $I \leq 0.02X - 0.2$ , where X is the weight percent oligomer in the composition and I is expressed in weight percent imino; or
- (f) when said composition comprises from 30 to 50 wt. % oligomer, said composition has an imino content of less than 0.7 wt. %, and
- (g) wherein the weight percent of said monomeric and oligomeric alkoxymethylated melamine molecules does not exceed 100%.

CC 1409609v1



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AFS

<b>CERTIFICATE OF MAILING BY EXPRESS MAIL POST OFFICE TO ADDRESSEE (37 CFR 1.10)</b>		Matter No.
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Applicant(s): George T. Spitz, et al.	390533
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Serial No.	Filing Date	Examiner	Group Art Unit
09/783,233	February 14, 2001	C. Toomer	1714

Invention	Alkoxymethyl Melamine Crosslinkers
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I hereby certify that this Transmittal Form (1 page); Fee Transmittal For FY 2005 (1 page in duplicate); Appeal Brief (10 pages in triplicate); authorization to charge \$500 for the Appeal Brief filing; authorization to charge additional fees that may be required, or credit any overpayment, to Deposit Account No. 12-0600 and return post card are being mailed in an envelope addressed to: Mail Stop: Appeal Brief -- Patent, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 9th day of May, 2005.
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Sharon Schenk
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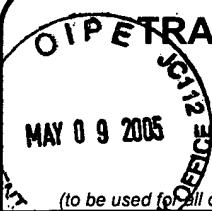
Name of Depositor

*Sharon Schenk*

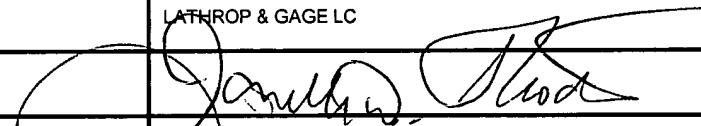
Signature of Depositor

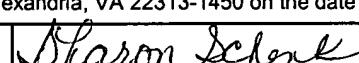
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 <p><b>TRANSMITTAL FORM</b></p> <p>MAY 9 2005</p> <p>(to be used for all correspondence after initial filing)</p>		Application Number	09/783,233
		Filing Date	February 14, 2001
		First Named Inventor	George T. Spitz
		Art Unit	1714
		Examiner Name	C. Toomer
Total Number of Pages in This Submission	1	Attorney Docket Number	390533

ENCLOSURES (check all that apply)			
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final  <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Express Abandonment Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application  <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Certificate of Mailing Return Post Card	
		<b>Remarks</b>	

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
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Signature			
Printed Name	Janelle D. Strode		
Date	May 9, 2005	Reg. No.	34,738

CERTIFICATE OF MAILING 37 CFR 1.10			
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Signature			
Typed or printed name	Sharon Schenk	Date	May 9, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL

**MAY 09 2005** for FY 2005

 Applicant claims small entity status. See 37 CFR 1.27~~ALL FEE PAYMENT~~

(\$ 500)

**Complete If Known**

Application Number	09/783,233
Filing Date	February 14, 2001
First Named Inventor	George T. Spitz
Examiner Name	C. Toomer
Art Unit	1714
Attorney Docket No.	390533

**METHOD OF PAYMENT** (check all that apply)

Check  Credit Card  Money Order  None  Other (please identify) : \_\_\_\_\_

Deposit Account Deposit Account Number: 12-0600 Deposit Account Name: LATHROP & GAGE LC

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

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Under 37 CFR 1.16 and 1.17

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**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

<u>Application Type</u>	<u>FILING FEES</u>		<u>SEARCH FEES</u>		<u>EXAMINATION FEES</u>		
	<u>Fee (\$)</u>	<u>Small Entity</u>	<u>Fee (\$)</u>	<u>Small Entity</u>	<u>Fee (\$)</u>	<u>Small Entity</u>	<u>Fees Paid (\$)</u>
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

**Small Entity**

Fee (\$) Fee (\$)

50 25

Each independent claim over 30 (including Reissues)

200 100

Multiple dependent claims

360 180

**Total Claims****Extra Claims****Fee (\$)****Fee Paid (\$)****Multiple Dependent Claims****Fee (\$)** **Fee Paid (\$)**

-31 or HP= \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

\_\_\_\_\_ - \_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20.

**Indep. Claims****Extra Claims****Fee (\$)****Fee Paid (\$)**

- 3 or HP= \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

\_\_\_\_\_ - \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each additional 50 or fraction thereof</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
- 100 = _____	/ 50 = _____	(round up to a whole number) x _____	= _____	_____

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge) : Filing Appeal Brief

**Fees Paid (\$)**

\_\_\_\_\_

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Signature

Name (Print/Type)

Registration No.  
(Attorney/Agent)

34,738

Telephone

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Date

May 9, 2005

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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